

Indiana Water Quality Coalition Issue Paper – Antidegradation Rulemaking

Pollutant of Concern Definition

The “pollutant of concern” definition must be sufficiently clear to adequately define the universe of pollutants to which the antidegradation implementation procedures apply. The definition should also limit review to a finite and reasonable set of pollutants so that dischargers are provided fair notice at the beginning of the process about which pollutants will be subject to review.

The Coalition has a long-standing concern with IDEM’s attempts to define the universe of pollutants to which the antidegradation implementation procedures apply. While the antidegradation policy has been broadly interpreted to apply to all pollutants, it is not possible to apply the antidegradation implementation procedures to certain pollutants and indicator parameters (*i.e.*, pH, whole effluent toxicity). It is also not reasonable to apply the implementation procedures to pollutants subject to Tier II values instead of Tier I criteria. Finally, it is essential that the rule clearly limit review to a finite and reasonable set of pollutants so that dischargers are provided fair notice at the beginning of the process about which pollutants will be subject to review. This will ensure certainty in the process, and avoid after-the-fact “gotchas” regarding whether certain pollutants should have been subject to antidegradation review.

The most recent draft of the antidegradation rule contains the following definition:

“Pollutant of concern” means a pollutant that is reasonably expected to be present in a discharge based on the source and nature of the discharge.

Draft 327 IAC 2-1.3-2(45) (Aug. 4, 2008). This definition was developed based upon discussion during the July 15, 2008 workgroup meeting, and was meant to narrow the universe of pollutants to be evaluated for any given discharger. However, as Coalition representatives discussed during the August 12, 2008 workgroup meeting, this revised definition is broad and vague, and as a result, does not provide fair notice to dischargers about the extent to which they are expected to search for and disclose pollutants that may be present in the discharge. In particular, we are concerned that the language could be interpreted to apply to parameters which may be present but only at infinitesimal concentrations (often well below currently available test methods), or parameters for which there are no applicable water quality criteria or treatment standards. In these situations, antidegradation review is simply not possible or practicable.

To address this concern, the Coalition recommends that IDEM either modify the most recent definition to establish a reasonable threshold based upon impacts to designated uses, or to replace the most recent definition with the previous definition. Each of these approaches is explained in greater detail below.

Attachment 2

The first option would involve modifying the most recent definition as follows:

“Pollutant of concern” means a pollutant that is reasonably expected to be present in a discharge based on the source and nature of the discharge **and may reasonably be expected to affect the designated uses of the receiving water.**

This definition is based upon the definition proposed in the Iowa draft antidegradation implementations procedures rule¹, and is meant to more clearly limit the universe only to those pollutants that would be reasonably expected to affect designated uses. With this additional language, it should be understood that dischargers do not need to hunt for every possible pollutant in the discharge, not matter how tiny the level, but instead should focus on pollutants that, in nature and concentration, could impact designated uses of the waterbody.

Another option would be to return to the definition in the previous draft of the rule (Jun. 5, 2008):

“Pollutant of concern” means a substance for which an NPDES permit limit can be established using a WQBEL or a technology-based effluent limitation according to 327 IAC 2-1-6, 327 IAC 2-1.5-8, 327 IAC 5-2-11.1, 327 IAC 5-2-11.4, 327 IAC 5-2-11.6 and 327 IAC 5-5-2.

This definition is similar in nature to Ohio’s definition,² and very specifically defines the universe of pollutants that would be subject to antidegradation review to those for which IDEM can establish a valid permit limit. If this definition approach is used, it should clearly exclude Tier II values and WET.

¹ “Pollutant of Concern: Pollutants of concern for antidegradation reviews include those pollutants which are reasonably expected to be present in the discharge and may reasonably expected to affect the beneficial uses.” http://www.iowadnr.com/water/standards/files/antideg_clean.pdf, Sept. 2, 2008.

² “. OAR 3745-1-05(A)(23): “Regulated pollutant” means any parameter for which water quality criteria have been adopted in, or developed pursuant to, Chapter 3745-1 of the Administrative Code with the exception of biological criteria, and any other parameter that may be limited in a national pollutant discharge elimination system permit as a result of new source performance standards, best conventional pollutant control technology, best available technology economically achievable or best practicable control technology currently available for the appropriate categorical guidelines of 40 C.F.R. 400 to 40 C.F.R. 471. For the purposes of this rule, pH and dissolved oxygen are not considered “regulated pollutants.”